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Paper No. 5

EUGNE R. QUINN, JR.
4030 COOL WATER COURT
WINTER PARK, FL 32792

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|-------------------------------------|---|----------------------------|
| In re Application of | : | OFFICE OF PETITIONS |
| Terry Covert | : | |
| Application No. 09/903,918 | : | DECISION DISMISSING |
| Filed: July 12, 2001 | : | PETITION |
| Attorney Docket NO. COVERT001 | : | |
| Title: METHOD, APPARATUS AND SYSTEM | : | |
| FOR PRICING AND SELLING FAMILY | : | |
| PROTECTOR INSURANCE | : | |

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a), filed April 30, 2004.

The above-identified application became abandoned on October 30, 2001 for failure to file a timely reply to the NOTICE TO FILE CORRECTED APPLICATIONS PAPERS mailed August 30, 2001. The Notice set a two-month period for reply, with extensions of time obtainable under § 1.136(a). A courtesy Notice of Abandonment was mailed on January 30, 2004.

Petitioner submits that the delay was unavoidable as the Reply was in fact timely filed and the application should not have been abandoned. Petitioner conjectures that, as a result of the anthrax mail scares of the time, the Office did not receive the responsive preliminary amendment. In support thereof, petitioner submits a copy of a Transmittal Form with a certificate of mailing signed October 18, 2001 by patent attorney Eugene Quinn. However, the petition included no statement of attorney Quinn.

On petition, applicant submitted payment of the petition fee under § 1.17(1) and a reply to the Office action in the form of a preliminary amendment, including replacement drawings.

DISCUSSION

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the

filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c). The instant petition lacks item (3). The showing of record before the Office is inadequate to establish unavoidable delay within the meaning of 37 CFR § 1.137(a)(3).

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable (The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business.) In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 U.S.P.Q. 666, 167-68 (D.D.C. 1963), aff'd, 143 U.S.P.Q. 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). Decisions on revival are made on a "case-by-case" basis, taking all the facts and circumstances into account." Smith, 671 F.2d at 538, 213 U.S.P.Q. at 982. Nonetheless, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines, 673 F. Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32.

37 CFR § 1.8, provides, in pertinent parts that:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. ...

(c) The Office may require additional evidence to determine if the correspondence was timely filed.

The instant petition was filed within a few months of the mailing of the Notice of Abandonment. However, the petition was filed several years after the abandonment of the application.

Moreover, the petition does not include a statement from attorney Quinn or other proper party attesting to having placed the correspondence in first class mail on October 18, 2001.

In view thereof, it cannot be concluded that petitioner has met his burden of showing unavoidable delay.

CONCLUSION

Petitioner has not met the showing required under § 1.137(a).

Accordingly, the petition is **DISMISSED** without prejudice to reconsideration upon the submission of a statement pursuant to 37 CFR § 1.8(b) by attorney Quinn.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR § 1.137(a)" or "Renewed Petition under 37 CFR § 1.137(b)," as appropriate. Extensions of time are permitted under § 1.136(a).

Alternative Venue

While the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable, petitioner is not precluded from seeking relief by filing a request for reconsideration pursuant to 37 CFR § 1.137(b) on the basis of unintentional delay. A grantable petition under § 1.137(b) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 CFR § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to § 1.137(d).

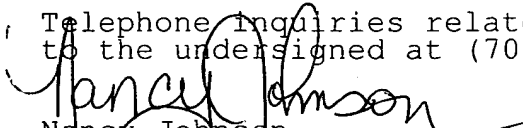
Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-0309.


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